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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF

**DECLARATION OF MATTHEW D.  
CANNON IN SUPPORT OF ARISTA  
NETWORKS, INC.'S ADMINISTRATIVE  
MOTION TO FILE DOCUMENTS  
UNDER SEAL (DKT. 107)**

**DEMAND FOR JURY TRIAL**

**DECLARATION OF MATTHEW D. CANNON**

I, Matthew D. Cannon, declare as follows:

1. I am an attorney licensed to practice in the State of California and am admitted to practice before this Court. I am an associate with the law firm Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Plaintiff Cisco Systems, Inc. (“Cisco”). I have personal knowledge of the matters set forth in this Declaration, and if called as a witness I would testify competently to those matters.

2. I make this declaration in support of Arista Networks, Inc.’s (“Arista’s”) Administrative Motion to File Documents Under Seal, Dkt. 107 (“Sealing Motion”) in connection with Arista’s Proposed Discovery Plan, Dkt. 108 (“Plan”) in connection with its Motion to Amend Scheduling Order or, in the Alternative, to Stay Patent Claims Pending *Inter Partes* Review, Dkt. 93 (“Arista’s Brief”). I make this declaration in accordance with Civil Local Rule 79-5(e) on behalf of Cisco to confirm that the information contained in the documents referenced in the Sealing Motion should be sealed.

3. Arista’s Brief and Plan are non-dispositive. In this context, materials may be sealed so long as the party seeking sealing makes a “particularized showing” under the “good cause” standard of Federal Rule of Civil Procedure 26(c). *Kamkana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003)). In addition, Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law”( *i.e.*, is “sealable”). Civil L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

4. Pursuant to Civil L.R. 79-5(e), good cause exists to seal the documents identified in the Sealing Motion, also set forth below, because the information sought to be sealed reflects confidential information that “give[s] [Cisco] an opportunity to obtain an advantage over competitors who do not know or use it.” *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (quoting *Restatement of Torts* § 757, cmt b):

| Document  | Portions to Be Filed Under Seal                       |
|---|---|
| Defendant Arista's Proposed Discovery Plan ("Plan")   | Page 4, lines 19 and 20; Page 5, lines 14 through 16. |
| Exhibit D to the Declaration of Elizabeth K. McCloskey in Support of Defendant Arista's Proposed Discovery Plan ("Exhibit D") | Entire  |
| Exhibit E to the Declaration of Elizabeth K. McCloskey in Support of Defendant Arista's Proposed Discovery Plan ("Exhibit E") | Entire  |
| Exhibit F to the Declaration of Elizabeth K. McCloskey in Support of Defendant Arista's Proposed Discovery Plan ("Exhibit F") | Entire  |
| Exhibit H to the Declaration of Elizabeth K. McCloskey in Support of Defendant Arista's Proposed Discovery Plan ("Exhibit H") | Entire  |

5. Exhibit D is a copy of an internal Cisco business communication produced by Cisco in ITC Investigation Nos. 337-TA-944 and 337-TA-945 and designated as "Confidential Business Information." Under the Stipulated Protective Order governing this litigation, Dkt. 53 at 6 fn. 1, this document is deemed to have been produced in this case as "Highly Confidential – Attorneys' Eyes Only Information." Exhibit D comprises Cisco's confidential business information regarding, *inter alia*, sales (including sales leads, strategies, and campaigns), accounts, products, valuations, competitors, and the gathering of information regarding all of the foregoing. Specifically, Exhibit D contains a discussion of factors that Cisco utilizes in analyzing

1 the markets for its products. Maintaining this information as confidential provides Cisco with an  
 2 “opportunity to obtain an advantage over competitors” who may engage in sales activities and  
 3 gather information regarding the same less optimally than Cisco. *Elec. Arts*, 298 F. App’x at 569.  
 4 Moreover, disclosing this information to Cisco’s competitors would harm Cisco’s business by,  
 5 *inter alia*, allowing Cisco’s competitor’s to learn Cisco’s strategies for making sales and for  
 6 gathering information in furtherance of the same, and in turn adopt and/or counteract those  
 7 strategies. This would “harm [Cisco’s] competitive standing.” *Nixon v. Warner Commc’ns, Inc.*,  
 8 435 U.S. 589, 598 (1978).

9         6. Exhibit E is a copy of an internal Cisco business communication produced by Cisco  
 10 in ITC Investigation Nos. 337-TA-944 and 337-TA-945 and designated as “Confidential Business  
 11 Information.” Under the Stipulated Protective Order governing this litigation, Dkt. 53 at 6 fn. 1,  
 12 this document is deemed to have been produced in this case as “Highly Confidential – Attorneys’  
 13 Eyes Only Information.” Exhibit E comprises Cisco’s confidential business information  
 14 regarding, *inter alia*, sales (including sales leads, strategies, and campaigns), customers, accounts,  
 15 products, valuations, competitors, and the gathering of information regarding all of the foregoing.  
 16 Specifically, this includes information regarding Cisco’s sales initiatives and specific customer  
 17 proposals. Maintaining this information as confidential provides Cisco with an “opportunity to  
 18 obtain an advantage over competitors” who may identify prospective customers, engage in sales  
 19 activities, and gather information regarding the same less optimally than Cisco. *Elec. Arts*, 298 F.  
 20 App’x at 569. Moreover, disclosing this information to Cisco’s competitors would harm Cisco’s  
 21 business by, *inter alia*, allowing Cisco’s competitor’s to learn of Cisco’s customers, and Cisco’s  
 22 strategies for making sales and for gathering information in furtherance of the same, and allowing  
 23 competitors to in turn target Cisco’s customers, and adopt and/or counteract Cisco’s strategies.  
 24 This would “harm [Cisco’s] competitive standing.” *Nixon*, 435 U.S. at 598.

25         7. Exhibit F is a copy of an internal Cisco business communication produced by Cisco  
 26 in ITC Investigation Nos. 337-TA-944 and 337-TA-945 and designated as “Confidential Business  
 27 Information.” Under the Stipulated Protective Order governing this litigation, Dkt. 53 at 6 fn. 1,  
 28 this document is deemed to have been produced in this case as “Highly Confidential – Attorneys’

1 Eyes Only Information.” Exhibit F comprises Cisco’s confidential business information  
2 regarding, *inter alia*, marketing, messaging, product strategies, sales, including sales strategies and  
3 campaigns, customers, accounts, and pricing. Exhibit F includes detailed information regarding  
4 Cisco’s strategic planning, including product roadmaps and marketing initiatives. Maintaining this  
5 information as confidential provides Cisco with an “opportunity to obtain an advantage over  
6 competitors” who may engage in marketing and sales activities and identify prospective customers  
7 less optimally than Cisco. *Elec. Arts*, 298 F. App’x at 569. Moreover, disclosing this information  
8 to Cisco’s competitors would harm Cisco’s business by, *inter alia*, allowing Cisco’s competitor’s  
9 to learn the identity of Cisco’s customers and Cisco’s marketing, sales, and product strategies, and  
10 allowing competitors to in turn target Cisco’s customers and adopt and/or counteract Cisco’s  
11 strategies. This would “harm [Cisco’s] competitive standing.” *Nixon*, 435 U.S. at 598.

12 8. Exhibit H is a copy of an internal Cisco business communication produced by  
13 Cisco in ITC Investigation Nos. 337-TA-944 and 337-TA-945 and designated as “Confidential  
14 Business Information.” Under the Stipulated Protective Order governing this litigation, Dkt. 53 at  
15 6 fn. 1, this document is deemed to have been produced in this case as “Highly Confidential –  
16 Attorneys’ Eyes Only Information.” Exhibit H comprises Cisco’s confidential business  
17 information regarding, *inter alia*, Cisco’s assessment of competitors and strategies for addressing  
18 the same. Maintaining this information as confidential provides Cisco with an “opportunity to  
19 obtain an advantage over competitors” who may engage in competition and assessment the same  
20 less optimally than Cisco. *Elec. Arts*, 298 F. App’x at 569. Moreover, disclosing this information  
21 to Cisco’s competitors would harm Cisco’s business by, *inter alia*, allowing Cisco’s competitor’s  
22 to learn Cisco’s assessments and strategies for addressing the same and in turn adopt and/or  
23 counteract those strategies. This would “harm [Cisco’s] competitive standing.” *Nixon*, 435 U.S.  
24 at 598.

25 9. The portion of Arista’s Plan to be sealed quotes confidential information from  
26 Exhibits D, E, F, and H regarding Cisco’s sales and prospective sales, and competition regarding  
27 the same. Thus, this portion similarly comprises Cisco’s confidential business information, the  
28 confidentiality of which provides Cisco an “opportunity to obtain an advantage over competitors,”

1 and which would harm Cisco's business if disclosed to Cisco's competitors. *Elec. Arts*, 298 F.  
2 App'x at 569.

3 I declare under penalty of perjury under the laws of the State of California that the  
4 foregoing is true and correct, and that this declaration was executed in Berkeley, California, on  
5 November 16, 2015.

6  
7 /s/ Matthew D. Cannon

8 Matthew D. Cannon (Bar No. 252666)  
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